Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
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Rule

- 19b-4(f)(1)
- 19b-4(f)(2)
- 19b-4(f)(3)
- 19b-4(f)(4)
- 19b-4(f)(5)
- 19b-4(f)(6)

*Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010*

Section 806(e)(1) | Section 806(e)(2)

Exhibit 2 Sent As Paper Document | Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend the Exchanges schedule of fees at Equity 7, Section 118.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

- **First Name**: Brett
- **Last Name**: Kitt
- **Title**: AVP Principal Associate General Counsel
- **E-mail**: Brett.Kitt@Nasdaq.com
- **Telephone**: (301) 232-8132

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

- **Date**: 12/21/2023
- **By**: John Zecca

**NOTE**: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Date: 2023.12.21 12:05:41 -05'00'
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

For complete Form 19b-4 instructions please refer to the EFFS website.

### Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

### Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

### Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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### Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

- Exhibit Sent As Paper Document

### Exhibit 3 - Form, Report, or Questionnaire

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

- Exhibit Sent As Paper Document

### Exhibit 4 - Marked Copies

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

### Exhibit 5 - Proposed Rule Text

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

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### Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

   (a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)\(^1\) and Rule 19b-4 thereunder,\(^2\) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s schedule of fees at Equity 7, Sections 114 and 118, as described further below.

   A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

   (b) Not applicable.

   (c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

   The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

   Questions and comments on the proposed rule change may be directed to:

   Brett Kitt  
   AVP, Principal Associate General Counsel  
   Nasdaq, Inc.  
   301-232-8132

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3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

   On December 13, 2023, Nasdaq experienced a technical issue with its RASH order handling system. The issue involved a duplication of an internal order identification numbers, which impacted a subset of orders for some members, including unacknowledged orders, an inability to cancel open orders, intermittent port disconnects, missing execution reports, and mismatched execution reports.

   Because Nasdaq’s fee and rebate schedule in Equity 7, Sections 114 and 118 provide that members may achieve better pricing if they achieve certain specified volumes of activity during a given month (as measured by Consolidated Volume (defined below) and Average Daily Volume (“ADV”)), the RASH issue may have impacted the ability of affected members to reach the required volumes. By way of illustration, a member with shares of liquidity provided in all securities through one of its Nasdaq Market Center market participant identifiers (“MPIDs”) that represent more than 1.50% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities in equity securities of at least one round lot ("Consolidated Volume") during a month receives a rebate of $0.00305 per share executed with respect to liquidity that it provides during the month through displayed quotes/orders. By contrast, members providing lower volumes of liquidity receive lower rebates with respect to displayed quotes/order ranging from $0.0020 to $0.0030 per share executed. If a member had provided liquidity that represented slightly in excess of 1.50% of Consolidated Volume on each day of December 2023 other than December 13, but was prevented from reaching comparable levels on that date due to the RASH issue, it is
possible that the rebate it would ultimately earn for the entire month would be lower than would otherwise have been the case. Similarly, under Equity 7, Section 114, a member may be entitled to receive an enhanced rebate under Nasdaq’s Qualified Market Maker Program, Designated Liquidity Provider Program, or its NBBO Program, based on its achievement of certain Consolidated Volume or ADV criteria specified in the rule. The ability of a member to achieve these criteria may have also been affected by the RASH issue.

Accordingly, in order to ensure that fees and rebates are not adversely impacted by the RASH issue, Nasdaq proposes to exclude December 13, 2023 from calculations of Consolidated Volume and ADV made under Equity 7, Sections 114 and 118 if doing so would allow a member to achieve more favorable pricing than would be the case if the day were included. Thus, members that are unaffected by the RASH issue would not have the day arbitrarily excluded from their calculations. Nasdaq will perform all calculations needed to implement the change.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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4 15 U.S.C. 78f(b)(4) and (5).
Nasdaq believes that the proposed change is reasonable because it will allow members to receive December 2023 pricing that is based on either the exclusion, or the inclusion, of December 13, whichever is more favorable to the member. The proposed change is equitable and not unfairly discriminatory, because it will ensure that the fees and rebates applicable to members that were subject to the RASH issue are not adversely affected by the issue.

4. **Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The change will help to ensure that members that were affected by the RASH issue are not required to pay higher fees, or receive lower rebates, during December 2023 than would otherwise be the case. Accordingly, Nasdaq believes that the proposed changes will protect members from incurring unanticipated charges.

5. **Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act, the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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regulatory organization on any person, whether or not the person is a member of the self-
regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the
Commission summarily may temporarily suspend such rule change if it appears to the
Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for
the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If
the Commission takes such action, the Commission shall institute proceedings to
determine whether the proposed rule should be approved or disapproved.

   or of the Commission

   Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

   Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and
    Settlement Supervision Act

    Not applicable.

11. Exhibits


    5. Text of the proposed rule change.
SELF-REGULATORY ORGANIZATIONS; THE NASDAQ STOCK MARKET LLC; NOTICE OF FILING AND IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE TO AMEND THE EXCHANGE’S SCHEDULE OF FEES AT EQUITY 7 SECTIONS 114 AND 118

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4 thereunder,\(^2\) notice is hereby given that on December 21, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. **Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange’s schedule of fees at Equity 7, Sections 114 and 118.


II. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

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received on the proposed rule change. The text of these statements may be examined at
the places specified in Item IV below. The Exchange has prepared summaries, set forth
in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory
   Basis for, the Proposed Rule Change

1. Purpose

   On December 13, 2023, Nasdaq experienced a technical issue with its RASH
order handling system. The issue involved a duplication of an internal order
identification numbers, which impacted a subset of orders for some members, including
unacknowledged orders, an inability to cancel open orders, intermittent port disconnects,
missing execution reports, and mismatched execution reports.

   Because Nasdaq’s fee and rebate schedule in Equity 7, Sections 114 and 118
provide that members may achieve better pricing if they achieve certain specified
volumes of activity during a given month (as measured by Consolidated Volume (defined
below) and Average Daily Volume (“ADV”)), the RASH issue may have impacted the
ability of affected members to reach the required volumes. By way of illustration, a
member with shares of liquidity provided in all securities through one of its Nasdaq
Market Center market participant identifiers (“MPIDs”) that represent more than 1.50%
of the total consolidated volume reported to all consolidated transaction reporting plans
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(“Consolidated Volume”) during a month receives a rebate of $0.00305 per share
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Accordingly, in order to ensure that fees and rebates are not adversely impacted by the RASH issue, Nasdaq proposes to exclude December 13, 2023 from calculations of Consolidated Volume and ADV made under Equity 7, Sections 114 and 118 if doing so would allow a member to achieve more favorable pricing than would be the case if the day were included. Thus, members that are unaffected by the RASH issue would not have the day arbitrarily excluded from their calculations. Nasdaq will perform all calculations needed to implement the change.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and

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4  15 U.S.C. 78f(b)(4) and (5).
other charges among members and issuers and other persons using any facility, and is not
designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed change is reasonable because it will allow
members to receive December 2023 pricing that is based on either the exclusion, or the
inclusion, of December 13, whichever is more favorable to the member. The proposed
change is equitable and not unfairly discriminatory, because it will ensure that the fees
and rebates applicable to members that were subject to the RASH issue are not adversely
affected by the issue.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any
burden on competition not necessary or appropriate in furtherance of the purposes of the
Act. The change will help to ensure that members that were affected by the RASH issue
are not required to pay higher fees, or receive lower rebates, during December 2023 than
would otherwise be the case. Accordingly, Nasdaq believes that the proposed changes
will protect members from incurring unanticipated charges.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed
Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission
Action

The foregoing rule change has become effective pursuant to Section
19(b)(3)(A)(ii) of the Act.5

At any time within 60 days of the filing of the proposed rule change, the
Commission summarily may temporarily suspend such rule change if it appears to the

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s internet comment form [https://www.sec.gov/rules/sro.shtml](https://www.sec.gov/rules/sro.shtml); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-056 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website [https://www.sec.gov/rules/sro.shtml](https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule
change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-056 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

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THE NASDAQ STOCK MARKET LLC RULES

Equity Rules

Equity 7: Pricing Schedule

Section 114. Market Quality Incentive Programs

(a) – (j) No change.

(k) For purposes of all Consolidated Volume and ADV calculations under this Section for the month of December 2023, Nasdaq will exclude December 13, 2023, if doing so will allow a member to achieve more favorable pricing under the rule.

Section 118. Nasdaq Market Center Order Execution and Routing

(a) – (m) No change.

(n) For purposes of all Consolidated Volume and ADV calculations under this Section for the month of December 2023, Nasdaq will exclude December 13, 2023, if doing so will allow a member to achieve more favorable pricing under the rule.